

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2278

Introduced by Assembly Member Linder

February 18, 2016

An act to amend Section 597.1 of the Penal Code, relating to animals.

LEGISLATIVE COUNSEL'S DIGEST

AB 2278, as amended, Linder. Animal control: seizure of animals: costs.

(1) Existing law requires a peace officer, humane society officer, or animal control officer to take possession of a stray or abandoned animal, or any animal when the officer has reasonable grounds to believe that very prompt action is required to protect the health and safety of the animal or the health and safety of others. In the case of taking possession of a stray or abandoned animal, existing law requires the officer to provide care and treatment for the animal until the animal is deemed to be in suitable condition to be returned to the owner.

~~This bill would allow, but not require, a peace officer, humane society officer, or animal control officer to take possession of an animal in the above circumstances. The~~

This bill would require a seizing organization or entity to provide care and treatment for a seized animal until the animal is placed, returned to the owner, or euthanized.

(2) Existing law requires the owner or keeper of an animal that is properly seized to be personally liable to the seizing agency for the cost of the seizure and care of the animal.

This bill would make the owner or keeper of the animal liable to the seizing agency, and if the animal is impounded, to the impounding

agency, for the entire cost of the seizure or impoundment of the animal, including costs associated with preparing and posting notices and sending statements of charges. The bill would require the seizing and impounding agency to present the owner with a statement listing all accrued charges, as provided, either at the postseizure hearing or by personal service, ~~first-class~~ *first-class* mail, or electronic mail, as specified. *By imposing new duties on local seizing and impounding agencies, this bill would impose a state-mandated local program.*

(3) Existing law permits the return of an animal only when the owner can demonstrate to the satisfaction of the seizing agency or hearing officer that the owner can and will provide the necessary care for the animal.

This bill would require that if the animal was seized pursuant to a search warrant that the court that issued or adjudicated the warrant give its express approval prior to the release of the animal to the owner.

(4) Existing law makes it a misdemeanor for every owner, driver, or keeper of an animal to permit the animal to be in any building, enclosure, lane, street, square, or lot of any city, county, city and county, or judicial district without proper care and attention. Existing law, in cases involving cats and dogs, allows a seizing entity or prosecuting attorney to file a petition in a criminal action to request that the court issue an order forfeiting an animal prior to the final disposition of the case.

This bill would make the above provision applicable to any animal.

(5) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 597.1 of the Penal Code is amended to
2 read:

3 597.1. (a) (1) Each owner, driver, or keeper of any animal
4 who permits the animal to be in any building, enclosure, lane,
5 street, square, or lot of any city, county, city and county, or judicial
6 district without proper care and attention is guilty of a

1 misdemeanor. Any peace officer, humane officer, or animal control
 2 officer ~~may~~ *shall* take possession of the stray or abandoned animal
 3 until the animal is deemed to be in suitable condition to be returned
 4 to the owner. When the officer has reasonable grounds to believe
 5 that very prompt action is required to protect the health or safety
 6 of the animal or the health or safety of others, the officer ~~may~~ *shall*
 7 immediately seize the animal and comply with subdivision (f). In
 8 all other cases, the officer shall comply with the provisions of
 9 subdivision (g). If the animal is seized, the seizing organization
 10 or agency shall provide care and treatment for the animal until the
 11 animal is placed, returned to the owner, or euthanized. The full
 12 cost of caring for and treating any animal properly seized under
 13 this subdivision or pursuant to a search warrant shall constitute a
 14 lien on the animal and the animal shall not be returned to its owner
 15 until the charges are paid, if the seizure is upheld pursuant to this
 16 section.

17 (2) Notwithstanding any other law, if an animal control officer
 18 or humane officer, when necessary to protect the health and safety
 19 of a wild, stray, or abandoned animal or the health and safety of
 20 others, seeks to administer a tranquilizer that contains a controlled
 21 substance, as defined in Division 10 (commencing with Section
 22 11000) of the Health and Safety Code, to gain control of that
 23 animal, he or she may possess and administer that tranquilizer with
 24 direct or indirect supervision as determined by a licensed
 25 veterinarian, provided that the officer has met each of the following
 26 requirements:

27 (A) Has received training in the administration of tranquilizers
 28 from a licensed veterinarian. The training shall be approved by
 29 the Veterinary Medical Board.

30 (B) Has successfully completed the firearms component of a
 31 course relating to the exercise of police powers, as set forth in
 32 Section 832.

33 (C) Is authorized by his or her agency or organization to possess
 34 and administer the tranquilizer in accordance with a policy
 35 established by the agency or organization and approved by the
 36 veterinarian who obtained the controlled substance.

37 (D) Has successfully completed the euthanasia training set forth
 38 in Section 2039 of Title 16 of the California Code of Regulations.

39 (E) Has completed a state and federal fingerprinting background
 40 check and does not have any drug- or alcohol-related convictions.

(b) Each sick, disabled, infirm, or crippled animal, except a dog or cat, that is abandoned in any city, county, city and county, or judicial district may be killed by the officer if, after a reasonable search, no owner of the animal can be found. It shall be the duty of all peace officers, humane officers, and animal control officers to cause the animal to be killed or rehabilitated and placed in a suitable home on information that the animal is stray or abandoned. The officer may likewise take charge of any animal, including a dog or cat, that by reason of lameness, sickness, feebleness, or neglect, is unfit for the labor it is performing, or that in any other manner is being cruelly treated, and provide care and treatment for the animal until it is deemed to be in a suitable condition to be returned to the owner. When the officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of an animal or the health or safety of others, the officer shall immediately seize the animal and comply with subdivision (f). In all other cases, the officer shall comply with subdivision (g). The full cost of caring for and treating any animal properly seized under this subdivision or pursuant to a search warrant shall constitute a lien on the animal and the animal shall not be returned to its owner until the charges are paid.

(c) (1) Any peace officer, humane officer, or animal control officer shall convey all injured cats and dogs found without their owners in a public place directly to a veterinarian known by the officer to be a veterinarian who ordinarily treats dogs and cats for a determination of whether the animal shall be immediately and humanely destroyed or shall be hospitalized under proper care and given emergency treatment.

(2) If the owner does not redeem the animal within the locally prescribed waiting period, the veterinarian may personally perform euthanasia on the animal. If the animal is treated and recovers from its injuries, the veterinarian may keep the animal for purposes of adoption, provided the responsible animal control agency has first been contacted and has refused to take possession of the animal.

(3) Whenever any animal is transferred to a veterinarian in a clinic, such as an emergency clinic that is not in continuous operation, the veterinarian may, in turn, transfer the animal to an appropriate facility.

(4) If the veterinarian determines that the animal shall be hospitalized under proper care and given emergency treatment,

1 the costs of any services that are provided pending the owner's
2 inquiry to the responsible agency, department, or society shall be
3 paid from the dog license fees, fines, and fees for impounding dogs
4 in the city, county, or city and county in which the animal was
5 licensed or, if the animal is unlicensed, shall be paid by the
6 jurisdiction in which the animal was found, subject to the provision
7 that this cost be repaid by the animal's owner. The full cost of
8 caring for and treating any animal seized under this subdivision
9 shall constitute a lien on the animal and the animal shall not be
10 returned to the owner until the charges are paid. No veterinarian
11 shall be criminally or civilly liable for any decision that he or she
12 makes or for services that he or she provides pursuant to this
13 subdivision.

14 (d) An animal control agency that takes possession of an animal
15 pursuant to subdivision (c) shall keep records of the whereabouts
16 of the animal from the time of possession to the end of the animal's
17 impoundment, and those records shall be available for inspection
18 by the public upon request for three years after the date the animal's
19 impoundment ended.

20 (e) Notwithstanding any other provision of this section, any
21 peace officer, humane officer, or any animal control officer may,
22 with the approval of his or her immediate superior, humanely
23 destroy any stray or abandoned animal in the field in any case
24 where the animal is too severely injured to move or where a
25 veterinarian is not available and it would be more humane to
26 euthanize the animal.

27 (f) Whenever an officer authorized under this section seizes or
28 impounds an animal based on a reasonable belief that prompt action
29 is required to protect the health or safety of the animal or the health
30 or safety of others, the officer shall, prior to the commencement
31 of any criminal proceedings authorized by this section, provide
32 the owner or keeper of the animal, if known or ascertainable after
33 reasonable investigation, with the opportunity for a postseizure
34 hearing to determine the validity of the seizure or impoundment,
35 or both.

36 (1) The agency shall cause a notice to be affixed to a
37 conspicuous place where the animal was situated or personally
38 deliver a notice of the seizure or impoundment, or both, to the
39 owner or keeper within 48 hours, excluding weekends and holidays.
40 The notice shall include all of the following:

1 (A) The name, business address, and telephone number of the
2 officer providing the notice.

3 (B) A description of the animal seized, including any
4 identification upon the animal.

5 (C) The authority and purpose for the seizure or impoundment,
6 including the time, place, and circumstances under which the
7 animal was seized.

8 (D) A statement that, in order to receive a postseizure hearing,
9 the owner or person authorized to keep the animal, or his or her
10 agent, shall request the hearing by signing and returning an
11 enclosed declaration of ownership or right to keep the animal to
12 the agency providing the notice within 10 days, including weekends
13 and holidays, of the date of the notice. The declaration may be
14 returned by personal delivery or mail.

15 (E) A statement that the full cost of caring for and treating any
16 animal properly seized under this section is a lien on the animal
17 and that the animal shall not be returned to the owner until the
18 charges are paid, and that failure to request or to attend a scheduled
19 hearing shall result in liability for this cost.

20 (2) The postseizure hearing shall be conducted within 48 hours
21 of the request, excluding weekends and holidays. The seizing
22 agency may authorize its own officer or employee to conduct the
23 hearing if the hearing officer is not the same person who directed
24 the seizure or impoundment of the animal and is not junior in rank
25 to that person. The agency may utilize the services of a hearing
26 officer from outside the agency for the purposes of complying with
27 this section.

28 (3) Failure of the owner or keeper, or of his or her agent, to
29 request or to attend a scheduled hearing shall result in a forfeiture
30 of any right to a postseizure hearing or right to challenge his or
31 her liability for costs incurred.

32 (4) The agency, department, or society employing the person
33 who directed the seizure shall be responsible for the costs incurred
34 for caring and treating the animal, if it is determined in the
35 postseizure hearing that the seizing officer did not have reasonable
36 grounds to believe very prompt action, including seizure of the
37 animal, was required to protect the health or safety of the animal
38 or the health or safety of others. If it is determined the seizure was
39 justified, the owner or keeper shall be personally liable to the
40 seizing agency for the full cost of the seizure and care of the

1 animal. The charges for the seizure and care of the animal shall
2 be a lien on the animal. The animal shall not be returned to its
3 owner until the charges are paid and the owner demonstrates to
4 the satisfaction of the seizing agency or the hearing officer that
5 the owner can and will provide the necessary care for the animal.

6 (g) Where the need for immediate seizure is not present and
7 prior to the commencement of any criminal proceedings authorized
8 by this section, the agency shall provide the owner or keeper of
9 the animal, if known or ascertainable after reasonable investigation,
10 with the opportunity for a hearing prior to any seizure or
11 impoundment of the animal. The owner shall produce the animal
12 at the time of the hearing unless, prior to the hearing, the owner
13 has made arrangements with the agency to view the animal upon
14 request of the agency, or unless the owner can provide verification
15 that the animal was humanely destroyed. Any person who willfully
16 fails to produce the animal or provide the verification is guilty of
17 an infraction, punishable by a fine of not less than two hundred
18 fifty dollars (\$250) nor more than one thousand dollars (\$1,000).

19 (1) The agency shall cause a notice to be affixed to a
20 conspicuous place where the animal was situated or personally
21 deliver a notice stating the grounds for believing the animal should
22 be seized under subdivision (a) or (b). The notice shall include all
23 of the following:

24 (A) The name, business address, and telephone number of the
25 officer providing the notice.

26 (B) A description of the animal to be seized, including any
27 identification upon the animal.

28 (C) The authority and purpose for the possible seizure or
29 impoundment.

30 (D) A statement that, in order to receive a hearing prior to any
31 seizure, the owner or person authorized to keep the animal, or his
32 or her agent, shall request the hearing by signing and returning the
33 enclosed declaration of ownership or right to keep the animal to
34 the officer providing the notice within two days, excluding
35 weekends and holidays, of the date of the notice.

36 (E) A statement that the cost of caring for and treating any
37 animal properly seized under this section is a lien on the animal,
38 that any animal seized shall not be returned to the owner until the
39 charges are paid, and that failure to request or to attend a scheduled
40 hearing shall result in a conclusive determination that the animal

1 may properly be seized and that the owner shall be liable for the
2 charges.

3 (2) The preseizure hearing shall be conducted within 48 hours,
4 excluding weekends and holidays, after receipt of the request. The
5 seizing agency may authorize its own officer or employee to
6 conduct the hearing if the hearing officer is not the same person
7 who requests the seizure or impoundment of the animal and is not
8 junior in rank to that person. The agency may utilize the services
9 of a hearing officer from outside the agency for the purposes of
10 complying with this section.

11 (3) Failure of the owner or keeper, or his or her agent, to request
12 or to attend a scheduled hearing shall result in a forfeiture of any
13 right to a preseizure hearing or right to challenge his or her liability
14 for costs incurred pursuant to this section.

15 (4) The hearing officer, after the hearing, may affirm or deny
16 the owner's or keeper's right to custody of the animal and, if
17 reasonable grounds are established, may order the seizure or
18 impoundment of the animal for care and treatment.

19 (h) (1) If any animal is properly seized or impounded, or both
20 seized and impounded, under this section or pursuant to a search
21 warrant, the owner or keeper shall be personally liable to the
22 seizing agency or impounding agency, or both the seizing agency
23 and the impounding agency, for all cost of the seizure or
24 impoundment, or both the seizure and impoundment, and care of
25 the animal, including all costs associated with the preparation and
26 posting of notices and sending of statements of charges in
27 accordance with this section.

28 (2) An animal lawfully seized pursuant to this section or
29 pursuant to a search warrant shall be deemed to be abandoned and
30 may be disposed of by the seizing agency if the charges for the
31 seizure or impoundment and any other charges permitted under
32 this section are not paid within 14 days of the seizure or
33 impoundment, or if the owner, within 14 days of notice of
34 availability of the animal to be returned, fails to pay charges
35 permitted under this section and take possession of the animal. *An*
36 *animal properly seized under this section or pursuant to a search*
37 *warrant shall not be returned to its owner until the owner can*
38 *demonstrate to the satisfaction of the seizing agency or hearing*
39 *officer that the owner can and will provide the necessary care for*
40 *the animal. If the animal was seized pursuant to a search warrant,*

1 *express approval of the court that issued the warrant or*
2 *adjudicated the matter shall be obtained prior to the release of*
3 *the animal.*

4 (3) Notice of charges for the seizure, impoundment, and care
5 of the animal pursuant to this section shall be executed as follows:

6 (A) (i) If the animal is seized or impounded pursuant to
7 subdivision (f), a statement listing all charges that have accrued
8 from the time of an animal's seizure or impoundment shall be
9 presented to the owner or keeper at the time of the postseizure
10 hearing. If no postseizure hearing is held, the statement of charges
11 shall be presented to the owner or keeper via personal service, ~~first~~
12 ~~class~~ *first-class* mail, or electronic mail within two calendar days
13 of the expiration of the 10-day period during which an owner or
14 keeper may request a hearing specified in subparagraph (D) of
15 paragraph (1) of subdivision (f).

16 (ii) If the animal is seized or impounded following the issuance
17 of a preseizure notice pursuant to subdivision (g), a statement
18 listing all charges shall be presented to the owner or keeper via
19 personal service, ~~first-class~~ *first-class* mail, or electronic mail no
20 later than five calendar days after the date the animal is seized or
21 impounded.

22 (iii) If the animal is seized pursuant to a search warrant, a
23 statement listing all charges shall be presented to the owner or
24 keeper via personal service, ~~first-class~~ *first-class* mail, or electronic
25 mail no later than five calendar days after the date the animal is
26 seized or impounded.

27 (B) If the charges are paid and the animal remains impounded,
28 the impounding agency shall continue to present statements of
29 charges to the owner or keeper on an ongoing basis via personal
30 service, ~~first-class~~ *first-class* mail, or electronic mail. The
31 statements shall list all new charges that have accrued during the
32 time of impoundment since the last statement was sent or delivered.
33 The time period for delivery or mailing the subsequent statements
34 shall be at the discretion of the impounding agency, but shall not
35 exceed 21 days from the date the last statement was presented.

36 (C) The statement of charges specified in subparagraph (A) and
37 any subsequent statements specified in subparagraph (B) shall
38 include a notice that the animal will be deemed abandoned if
39 charges are not paid within 14 days of service, and that payment

1 of fees does not guarantee the release of the animal, but does allow
2 the owner or keeper to retain an ownership interest in the animal.

3 (i) If the animal requires veterinary care and the humane society
4 or public agency is not assured, within 14 days of the seizure of
5 the animal, that the owner will provide the necessary care, the
6 animal shall not be returned to its owner and shall be deemed to
7 have been abandoned and may be disposed of by the seizing
8 agency. A veterinarian may humanely destroy an impounded
9 animal without regard to the prescribed holding period when it has
10 been determined that the animal has incurred severe injuries or is
11 incurably crippled. A veterinarian also may immediately humanely
12 destroy an impounded animal afflicted with a serious contagious
13 disease unless the owner or his or her agent immediately authorizes
14 treatment of the animal by a veterinarian at the expense of the
15 owner or agent.

16 (j) An animal properly seized under this section or pursuant to
17 a search warrant shall not be returned to its owner until the owner
18 can demonstrate to the satisfaction of the seizing agency or hearing
19 officer that the owner can and will provide the necessary care for
20 the animal. If the animal was seized pursuant to a search warrant,
21 express approval of the court that issued the warrant or adjudicated
22 the matter shall be obtained prior to the release of the animal.

23 (k) (1) Prior to the final disposition of any criminal charges,
24 the seizing agency or prosecuting attorney may file a petition in a
25 criminal action requesting that, prior to that final disposition, the
26 court issue an order forfeiting the animal to the city, county, or
27 seizing agency. The petitioner shall serve a true copy of the petition
28 upon the defendant and the prosecuting attorney.

29 (2) Upon receipt of the petition, the court shall set a hearing on
30 the petition. The hearing shall be conducted within 14 days after
31 the filing of the petition, or as soon as practicable.

32 (3) The petitioner shall have the burden of establishing beyond
33 a reasonable doubt that, even in the event of an acquittal of the
34 criminal charges, the owner will not legally be permitted to retain
35 the animal in question. If the court finds that the petitioner has met
36 its burden, the court shall order the immediate forfeiture of the
37 animal as sought by the petition.

38 (4) This section does not authorize a seizing agency or
39 prosecuting attorney to file a petition to determine an owner's
40 ability to legally retain an animal pursuant to paragraph (3) of

1 subdivision (l) if a petition has previously been filed pursuant to
2 this subdivision.

3 (l) (1) Upon the conviction of a person charged with a violation
4 of this section, or Section 597 or 597a, all animals lawfully seized
5 and impounded with respect to the violation shall be adjudged by
6 the court to be forfeited and shall thereupon be transferred to the
7 impounding officer or appropriate public entity for proper adoption
8 or other disposition. A person convicted of a violation of this
9 section shall be personally liable to the seizing agency for all costs
10 of impoundment from the time of seizure to the time of proper
11 disposition. Upon conviction, the court shall order the convicted
12 person to make payment to the appropriate public entity for the
13 costs incurred in the housing, care, feeding, and treatment of the
14 seized or impounded animals. Each person convicted in connection
15 with a particular animal may be held jointly and severally liable
16 for restitution for that particular animal. The payment shall be in
17 addition to any other fine or sentence ordered by the court.

18 (2) The court may also order, as a condition of probation, that
19 the convicted person be prohibited from owning, possessing, caring
20 for, or residing with, animals of any kind, and require the convicted
21 person to immediately deliver all animals in his or her possession
22 to a designated public entity for adoption or other lawful disposition
23 or provide proof to the court that the person no longer has
24 possession, care, or control of any animals. In the event of the
25 acquittal or final discharge without conviction of the person
26 charged, if the animal is still impounded, the animal has not been
27 previously deemed abandoned pursuant to subdivision (h), the
28 court has not ordered that the animal be forfeited pursuant to
29 subdivision (k), the court shall, on demand, direct the release of
30 seized or impounded animals to the defendant upon a showing of
31 proof of ownership.

32 (3) Any questions regarding ownership shall be determined in
33 a separate hearing by the court where the criminal case was finally
34 adjudicated and the court shall hear testimony from any persons
35 who may assist the court in determining ownership of the animal.
36 If the owner is determined to be unknown or the owner is
37 prohibited or unable to retain possession of the animals for any
38 reason, the court shall order the animals to be released to the
39 appropriate public entity for adoption or other lawful disposition.
40 This section is not intended to cause the release of any animal,

1 bird, reptile, amphibian, or fish seized or impounded pursuant to
2 any other statute, ordinance, or municipal regulation. This section
3 shall not prohibit the seizure or impoundment of animals as
4 evidence as provided for under any other provision of law.

5 (m) It shall be the duty of all peace officers, humane officers,
6 and animal control officers to use all currently acceptable methods
7 of identification, both electronic and otherwise, to determine the
8 lawful owner or caretaker of any seized or impounded animal. It
9 shall also be their duty to make reasonable efforts to notify the
10 owner or caretaker of the whereabouts of the animal and any
11 procedures available for the lawful recovery of the animal and,
12 upon the owner's and caretaker's initiation of recovery procedures,
13 retain custody of the animal for a reasonable period of time to
14 allow for completion of the recovery process. Efforts to locate or
15 contact the owner or caretaker and communications with persons
16 claiming to be the owner or caretaker shall be recorded and
17 maintained and be made available for public inspection.

18 *SEC. 2. No reimbursement is required by this act pursuant to*
19 *Section 6 of Article XIII B of the California Constitution because*
20 *a local agency or school district has the authority to levy service*
21 *charges, fees, or assessments sufficient to pay for the program or*
22 *level of service mandated by this act, within the meaning of Section*
23 *17556 of the Government Code.*